Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

ROGER CHASE PURDY,

Petitioner,

vs.

RICHARD CHARLES PURDY, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Roger Chase Purdy
P. O. Box 1200
Brighton, Michigan 48116
No Telephone

43pp

QUESTION PRESENTED

Whether Richard Chase Purdy and Roger Chase Purdy, each United States citizens, were deprived of their rights, privileges, immunities, papers, property, and protections under the color of law and court procedure that are controlled by the Bill Of Rights, the Fourteenth Amendment, and United States Constitution.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

PETITIONER –

Roger Chase Purdy
P. O. Box 1200
Brighton, Livingston County, Michigan 48116
No Telephone

RESPONDENTS –

*Richard Purdy
P. O. Box 284
Hamilton, Butler County, Ohio 45012
Telephone 513-860-4459

Richard Charles Purdy
Guardian of the person of
Richard Chase Purdy
5491 Camelot Drive, Apt. No. 7
Fairfield, Butler County, Ohio 45012
Telephone 513-860-4459

Richard Charles Purdy
Guardian of the estate of
Richard Chase Purdy
5491 Camelot Drive, Apt. No. 7
Fairfield, Butler County, Ohio 45014
Telephone 513-860-4459

LIST OF PARTIES – Continued

Maralynn Purdy Dowell
2073 White Birch Drive
Vista, San Diego County, California 92083
Telephone 760-598-8363

Richard Chase Purdy, Deceased
349 West South Street
Jackson, Jackson County, Ohio 45640
No Telephone

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Petitioner makes the following corporate disclosure statement consistent with Federal Rules of Appellate Procedure and United States Court of Appeal For The Sixth Circuit Rule:

1. Is said party a subsidiary or affiliate of a publicly-owned corporation? NO

> If the answers is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the names party:

2. Is there a public-owned corporation, not a party to the case, that has a financial interest in the outcome? YES

> If the answer is YES, list the identity of such corporation and the nature of the financial interest:

SERVICE CORPORATION INTERNATIONAL, (SRV), NYSE, Houston, Texas. The nature of the exact financial interest is unknown. Service Corporation International owns 100% of Uniservice Corporation stock that includes E. E. Purdy & Sons Corporation mortuary empire investments located in the Pacific Northwest states. E. E. Purdy is the father of Richard Chase Purdy and the grandfather of the petitioner, Roger Chase Purdy.

/s/ Roger Chase Purdy — September 8, 2000

Roger Chase Purdy — Date

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

CASES FROM FEDERAL COURTS:

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and may be unpublished.

CASE FROM STATE COURT:

The opinion of the State of Ohio common pleas court appears not because the district court denied state court record relief to the removing party and petitioner.

JURISDICTION

FEDERAL COURTS

On January 28, 2000, the United States court of appeals decided my case.

On April 3, 2000, my timely petition for rehearing was denied by the United States court of appeals, and a copy of the order denying the rehearing appears at Appendix G.

On February 14, 2000, my timely application to extend time to file petition for rehearing was granted,

and a copy of the order granting the extension of time appears at Appendix H.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1), or in the alternative, under 28 U.S.C. Section 1651.

STATE COURT

On September 13, 1996, petitioner removed the State of Ohio common pleas court complaint or other paper to the district court under 28 U.S.C. Section 1331, 1332, and 1343 pursuant to 28 U.S.C. Section 1441 and 28 U.S.C. Section 1443.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution
2. Compact Between States Clause, Article I, Section 10, Clause 1
3. United States Constitution, Article III, Section 2
4. Full Faith And Credit Clause, Article IV, Section 1
5. Federal Bill of Rights
6. First Amendment
7. Fifth Amendment
8. Due Process Clause, Fourteenth Amendment
9. Civil Rights Act of 1871
10. The Removal Act

STATEMENT OF THE CASE

On February 10, 1999, the writ 28 U.S.C. Section 1651 power may have been invoked with the Roger Chase Purdy filing the Defendant Roger Chase Purdy Notice Of Appeal with the Clerk of the Court of Appeals to do what ought to be done in law and Equity because his First Amendment rights and his other federal Bill of Rights together with Fourteenth Amendment rights, the district court, and Case No. C-1-96-903 file were closed to him. Roger Chase Purdy is a resident and citizen of the City of Brighton, State of Michigan and United States of America. The January 28, 2000, court of appeals decision began with "Roger Chase Purdy, a pro se Ohio resident." The February 25, 2000, pro se appellant's petition for rehearing, page 6, stated "Roger Chase Purdy is a resident and citizen of the City of Brighton, State of Michigan and United States of America." The April 3, 2000, court of appeals Order denying the petition for rehearing, Appendix G herein, stated "Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order." Petitioner wonders if the court of appeals was also closed to the facts and law.

On July 10, 1992, Richard Chase Purdy issued a Power Of Attorney to Roger Chase Purdy (District Court Doc. 7, page 4), to handle the Richard Chase Purdy affairs without court intervention.

On July 18, 1975, Richard Chase Purdy issued The Last Will And Testament Of Richard Chase Purdy that revoked his 1970 Will. Richard Charles Purdy and Maralynn (Purdy) Dowell knew about the 1975 Will, and also

knew the 1970 Will representation by Richard Purdy and his attorneys is a misrepresentation; and they are not brother and sister of the ward, another misrepresentation. Roger Chase Purdy is entitled to Rule 11 sanctions against Richard Charles Purdy and his attorneys.

In Michigan, when the complaint for incompetence against Richard Chase Purdy was removed to United States District Court, Flint, Michigan, Richard Purdy and his attorneys continued to proceed in state court, contrary to 28 U.S.C. Section 1446(d). The ward was deprived of his civil rights under the color of state law with the Richard Purdy unconstitutionally taking Richard Chase Purdy from Genesee, County, Michigan, to Butler County, Ohio, where Richard Purdy filed his complaint against Richard Chase Purdy, a Michigan incompetent, for incompetence. A ward cannot sue or be sued. After the Ohio guardian was appointed, Richard Purdy's Michigan attorney, Jon Lawnaciz, caused the dismissal of the first complaint against Richard Chase Purdy for incompetence in the Michigan state court. Richard Purdy's Ohio attorney, John W. Uhl, dismissed the second incompetence action against Richard Chase Purdy in the district court. Petitioner appealed, and now, files this petition for a writ of certiorari to United States Court of Appeals for the Sixth Circuit.

REASONS FOR GRANTING THE PETITION

THERE ARE AT LEAST FIFTEEN REASONS FOR GRANTING THE PETITION

1. THE JANUARY 11, 1999, DISTRICT COURT ORDER IS REPUGNANT.

The District Court issued the above order, that invalidated the Constitution by denying Roger Chase Purdy his First Amendment right to petition government, the district court. The petitioner filed his Notice of Appeal and appeal fees from the Order with the Court of Appeals because the district court judge required permission to appeal. Then, the notice and fees were promptly and properly delivered to the district court. This Court has the authority to review the lower court orders under 28 U.S.C. Section 1651 in the Court of Appeals, Case 98-3626 and in both lower district court cases, C-1-96-903 and C-1-97-771. It is reasonable that the above order be reversed as unconstitutional or contrary to the Constitution, federal rules and law.

2. THE JANUARY 11, 1999, DISTRICT COURT ORDER REVERSES FEDERAL GUARDIAN AD LITEM LAW.

A federal guardian ad litem for Richard Chase Purdy is necessary and consistent with federal court procedure. Take at face value, the complaint showed a conflict of interest between Richard Charles Purdy and both Richard Chase Purdy and Roger Chase Purdy. The respective legal positions of the incompetent and guardians are adverse in this lawsuit, and it cannot be said that the incompetent was "otherwise represented" in the action as provided in

Rule 17(c). *Noe v. True*, 507 F.2d 9 (6th Cir. 1974). The Fifth Circuit Court of Appeals, citing *Noe*, said that Courts have consistently recognized that they have in inherent power to appoint a guardian ad litem when it appears the general representative has interests which may conflict with those of the person he is suppose to represent. *Adelman On Behalf of Adelman v. Graves*, 747 F.2d 986 (5th Cir. 1984). The District Court and the Court of Appeals are in conflict with the United States Court Of Appeals for the Fifth Circuit. The incompetent, the lower courts, and this Court are deprived of a federal guardian ad litem that was requested by the petitioner, but denied in the District Court.

3. THE JANUARY 11, 1999, DISTRICT COURT ORDER AVOIDS COLLATERAL ISSUES LAW INCLUDING ACCOUNTINGS.

Richard Charles Purdy, while acting as guardians or defendant guardians de son tort, denied accountings to the petitioner. The accountings under federal law or a state citation to account, asked for by the petitioner, were denied by the lower courts. The accountings are not filed in the district court, but John W. Uhl represented to the lower courts that "The Guardian has filed a Final Account in the Guardianship and considers the matter closed." John W. Uhl omitted where the purported accountings were given in the state courts of Butler County, Ohio; Genesee County, Michigan; Snohomish County, Washington; or other courts. The district court docket entries do not reflect an accounting, the petitioner did not receive any accountings, and the district court case was not remanded. A Richard Chase Purdy guardian ad litem

would have assisted the lower courts with the production of Richard Charles Purdy accountings in the district court. John W. Uhl and Richard Charles Purdy did not answer the writ of citation to account or for state court records. The petitioner is entitled to district court accountings even if the dismissal is effective. In a petitioner telephone call, Richard Charles Purdy replied to the petitioner's inquiry about accountings. Richard Charles Purdy stated that he was not going to provide an accounting unless a judge tells him to account.

4. THE DISTRICT COURT JANUARY 11, 1999, ORDER INVALIDATES THE FIFTH AMENDMENT AND FOURTEENTH AMENDMENT.

The district court reversed and withdrew its order of reference, sua sponte, without due process, notice, and opportunity to the petitioner that invalidated at least his Fifth Amendment and Fourteenth Amendment rights. Throughout the nation, United States citizens have these rights without district court approval. No party, including the United States Attorney General, can enter the matter or move the district court without court permission. There are no grounds for the order withdrawal except the weak or incorrect district court application of Fed. R. Civ. P. 41. Petitioner did not stipulate to the dismissal. The guardians, real or purported, are federal fiduciaries and receivers because of the removal, and an order of reference is necessary.

5. THE DISTRICT COURT JANUARY 11, 1999, ORDER MODIFIES FEDERAL RULES AND LAW.

District courts are deemed always open for the purpose of filing proper papers. Fed. R. Civ. P. 77(a); 28 U.S.C. Section 452. The clerk may not refuse to accept for filing any paper presented for such purpose solely on the ground that the paper has not been presented in proper form required by the federal procedure rules or local rules or practices. Fed. R. Civ. P. 5(e). The papers are proper because of the collateral issues; and Richard Charles Purdy, Gerald G. Froelkc, and John W. Uhl made misrepresentations to the district court that earned them court sanctions, a suspended collateral issue.

6. THE WELL-PLEADED COMPLAINT RULE WAS AVOIDED.

The lower courts failed to look beyond the words of the complaints under the exceptions to the "well-pleaded complaint" rule. One of the two exceptions to the rule is: a complaint artificially pleaded to avoid stating federal law claim on which complaint is necessarily based, will not defeat federal jurisdiction. The Richard Charles Purdy complaints attack Richard Chase Purdy and Roger Chase Purdy's rights. The complaint was not properly pleaded with proper party alignment that was addressed in the removal petition. In addition, Richard Chase Purdy is not the brother of Richard Charles Purdy, Roger Chase Purdy, and Maralynn P. Dowell, another Gerald G. Froelke and John W. Uhl misrepresentation or cloud. The Richard Charles Purdy district court complaint, Case No. C-1-96-903 contradicts his Case No. 1-97-771 complaint.

7. THE CONSTITUTIONAL COMPACT BETWEEN STATES WAS INVALIDATED.

The Richard Charles Purdy guardians' appointments invalidated the Constitution because it is a forbidden Compact Between States, U.S. Constitution, Article I, Section 10, Clause 1. Guardians were appointed in the State of Michigan and another additional guardians in the State of Ohio. Richard Chase Purdy had guardians in Michigan and Ohio at the same time. In Ohio, transfers of guardianships can be properly made between its counties. The Ohio guardians' appointments are clouds because of the purported two state transfers, and the fact Genesee County, Michigan is not an Ohio County. The State of Ohio court failed to give Full Faith and Credit, U.S. Constitution, Article IV, Section 1, to the State of Michigan. The net product is that the unlawful Ohio guardians' appointments followed by the Michigan guardians dismissal left Richard Chase Purdy without the protection of a guardian and guardian ad litem in the lower courts. The Roger Chase Purdy power of attorney and executor appointments by Richard Chase Purdy are superior to states courts' Richard Charles Purdy guardians and executor appointments; and the states courts, appointments are in violation of federal law. 42 U.S.C. Section 1983, Civil Rights Act of 1871.

8. THE FEDERAL REMOVAL ACT PROCEDURES WERE NOT FOLLOWED.

Federal procedure was not followed with respect to the Removal Act. This Court is deprived of the state court records because state court records were not filed,

ordered, or required by the district court. Petitioner was unable to perform his first removal duty regarding state court records, and a requested district court order was "denied." Richard Charles Purdy, Maralynn P. Dowell could have easily provided the records, but did not. The records and an early district court inquiry with the aid of an evidentiary hearing did not occur.

9. THE DISTRICT COURT DECISIONS CLOUDED TITLES AND RIGHTS.

Richard Charles Purdy and his attorneys causes of actions, acts, and intermeddling are clouds on the Richard Chase Purdy and Roger Chase Purdy property and rights under the Constitution. It may be broadly stated that a cloud on title is an outstanding instrument, record, claim, or encumbrance which is actually invalid or inoperative, but which may nevertheless impair title to property. In Ohio, an action to quiet title is an equitable proceeding to determine the validity of adverse claims to real estate. It is a means of removing "clouds" or encumbrances on the title which are apparently valid but in fact invalid. Any claim of the kind that has a tendency, even in a slight degree, to cast doubt upon the owner's title, and stand in the way of a full and free exercise of his ownership is a cloud upon his title, which the law should recognize and remove. In the usual case, removable clouds are created by instruments which are used to transfer property title, or by judicial proceedings to establish or enforce liens. Federal courts may be given jurisdiction over:

> "Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their authority." Constitution, Article III, Section 2.

The equity jurisdiction of the federal courts extend to suits to quiet title or remove a cloud thereon:

> "A federal court may look to the legislation of the state in which the court sits, to ascertain what constitutes a cloud upon the titles; and what the state laws declare to be such, the courts of the United States sitting in equity have jurisdiction to remove."

Reynolds v. First Nat. Bank, 112 U.S. 405.

Furthermore:

> "Bills to quiet title, brought by one in possess the property, belong to the ancient jurisdiction in equity, and no change in state legislation giving, in like cases, a remedy by action at law, can of itself curtail the jurisdiction in equity of the courts of United States"

McConihay v. Wright, 121 U.S. 201.

10. THE DISTRICT COURT HAS COLLATERAL JURISDICTION.

Chief Justice Rehnquist delivered the United States Supreme Court opinion in *Willy v. Coastal Corp.*, 503 U.S. 131, at 137 (1992), citing *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384 (1990) as follows:

> "The challenge in that case was to an order imposing Rule 11 sanctions for filing a frivolous

> complaint, entered after the plaintiff had voluntarily dismissed his action. In the course of our discussion we noted, "[I]t is well established that a federal court may consider collateral issues after an action is no longer pending . . . [An] imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate." *Id.*, at 395-396. Such an order implicates no constitutional concern because it "does not signify a district court's assessment of the legal merits of the complaint." *Id.*, at 396. It therefore does not raise the issue of a district court adjudicating the merits of a "case or controversy" over which it lacks jurisdiction."

A notice of dismissal, even if filed in the district court does not take out district court collateral jurisdiction. Under Ohio law, a guardian notice of dismissal of a real estate complaint does not end the lawsuit. The removal severed the state court jurisdiction, and the state court cannot proceed. The whole state court action was removed. Richard Purdy and his attorneys chose the district court to wind up the matter with their dismissal. It appears John W. Uhl has a hybrid dismissal scheme whereby he can work two courts with his one party dismissal. Since September 13, 1996 removal, the state court shall not proceed, 28 U.S.C. Section 1446(d), and any John W. Uhl and Richard Charles Purdy state court activity is void under federal case law, *South Carolina v. Moore*, 447 F.2d 1067 (4th Cir. 1971), and further, subject to Fed. R. Civ. P. 11 sanctions, Richard Charles Purdy used this method effectively in the Michigan, *People of the State*

of Michigan v. Wynn, 253 N.W.2d 123 (1977), state court to achieve Richard Chase Purdy unlawful removal to Butler County, Ohio. A Roger Chase Purdy appearance in the state court would waive federal jurisdiction. Sanctions, including Rule 11 sanctions, against Richard Purdy and Richard Charles Purdy, his attorneys, are lodged in the closed district court file. Collateral issues such as Roger Chase Purdy collateral papers for state court record, a ward Richard Chase Purdy federal guardian ad litem attorney, Richard Charles Purdy inventories, reports, and accountings, are also lodged but denied and stricken in the district court. Petitioner asks for their reinstatement and relief such as an order for Richard Charles Purdy to serve and file, at his personal expense, the state court record, or show cause why not within a certain time. The state court records are necessary for the district court to proceed. Furthermore, the petitioner asks for reversal of all district court notations, entries, orders, judgments with directions.

11. THE NOTICE OF DISMISSAL WAS DEFECTIVE.

Appendices D, E, and F are in non-compliance with district court local rule, S.D. Ohio L.R. 5.1(b), because of party designation omissions.

The district court assumed the Notice of Dismissal was effective, and closed the file and court. On October 18, 1996, Appendix D, Notice of Appearance; Appendix E, Suggestion of Death of Richard Chase Purdy; and Appendix F, Notice of Dismissal were filed in the district court. John W. Uhl appeared for the:

a. Plaintiff Richard Charles Purdy Appendix D

"Notice Of Appearance" not appearances, "Plaintiff Richard Charles Purdy, Guardian of Richard Chase Purdy, the Plaintiff herein" and improper names in Certificate of Service.

b. Plaintiff Richard Purdy ..... Appendix E

"Now comes John W. Uhl, attorney for Plaintiff Richard Purdy, and Certificate of Service "upon defendants of record"

c. Plaintiff Richard Purdy and Plaintiff Richard Charles Purdy ..... Appendix F

"Now comes Plaintiff Richard Purdy" . . . "no longer necessary for the Guardian to seek the relief sought in the original complaint filed herein. Therefore, Richard Charles Purdy, Guardian of Richard Chase Purdy dismisses his complaint." The Certificate of Service was upon the Guardian Richard Purdy but not defendant Richard Purdy.

Fed. R. Civ. P. 41 is a plaintiff dismissal, not a defendant or non-party dismissal. The Guardian of the Estate did not give notice of dismissal. The original plaintiff is Richard Purdy, who is district court defendant Richard Charles Purdy. Richard Purdy is the original Plaintiff in his original Ohio complaint against original defendant Richard Chase Purdy, a Michigan incompetent, for the claim of incompetence. A ward cannot sue or be sued.

In *Camacho v. Mancuso*, 53 F.3d 48 (4th Cir. 1995), the Fourth Circuit held that:

"(1) as a matter of first impression, requirements of federal rule providing that action may be voluntarily dismissed by plaintiff without order of court by filing stipulation of dismissal signed

> by all the parties are not met when only one party signs and files notice of dismissal, and (2) notice of dismissal signed and filed by only arrestee was ineffective under this federal rule, despite fact that both parties expressly agreed by telephone to dismiss case."

Further, and with respect to *Camacho v. Mancuso* and Appendix F:

Note 1: "that notice of dismissal signed and filed by only one of the parties did not satisfy rule and, therefore, case had not been properly dismissed;"

> *One signature and one filing did not satisfy the rule.*

Note 2: "the action requires tangible confirmation of parties' agreement to dismiss and rule's requirement that stipulation be filed in court is not merely technicality;"

> *A tangible confirmation of parties' agreement was not filed or signed. The removing party, Roger Chase Purdy, did not agree, sign, or file a stipulation.*

Note 3: "Notice of dismissal signed and filed by only plaintiffs was not an effective dismissal under federal rule providing that action may be voluntarily dismissed by plaintiff without order of court by filing stipulation of dismissal signed by all parties who have appeared in the action, despite fact that both parties agreed by telephone to dismiss case;"

> *All parties did not sign stipulation. Removing Party, Roger Chase Purdy did not sign and did not file, and did not agree to dismissal.*

Note 5: "Requirements of federal rule providing that action may voluntarily be dismissed by plaintiff without order of court by filing stipulation of dismissal signed by

all parties who have appeared in the action are not met when only one party signs and files notice of dismissal."

Only one signature on Notice of Dismissal.

Petitioner asks this Court to find the Notice Of Dismissal is defective. The district court ORDER, (paragraph 2) filed January 12, 1999, begins "The Court notes that this matter was dismissed by stipulation on October 11, 1996 (Doc. No. 6)." The district court decided a Rule 41(a)(1)(ii) stipulation dismissal. The court of appeals in its January 28, 2000, ORDER decided a Rule 41(a)(1)(i) plaintiff dismissal, but affirmed the district court January 12, 1999, district court Rule 41(a)(1)(ii) stipulation dismissal. The district court accomplished dismissal by denying removing party appearance by notation "Denied." The appellant asks for reversal of all district court notations, entries, orders, and judgments.

12. FEDERAL RULES OF CIVIL PROCEDURE RULE 41 AND THE TWO-DISMISSAL RULE.

In the petitioner's district court memorandum on motion to vacate dismissal and to continue (Doc. 7, paragraph 47):

The two-dismissal rule operates:

> *(a)* only when the second dismissal is an F.R.C.P. 41(a)(1)(i) dismissal on notice. *Sutton Place Dev. Inv. Co. v. Abacus Mtge. Inv. Co.*, 485 U.S. 961 (1988);
>
> *(b)* whether the first dismissal was effected in a federal or state court; however, the second dismissal must be in federal court. *Rader v. Baltimore O. R. Co.*, 309 U.S. 682 (1940);

> *(c)* as an adjudication upon the merits when it is filed by a plaintiff who has once dismissed in any court of the United States or of any state and action on or including the same claim. Fed. R. Civ. P. 41(a)(1).

The two-dismissal rule applies in this case. Richard Purdy's Michigan attorney, Jon Lawniczak caused the dismissal, in the Michigan state court, of a first lawsuit against Richard Chase Purdy for incompetence. Thereafter, Richard Purdy's Ohio attorney, John W. Uhl dismissed, in the federal district court, a second lawsuit against Richard Chase Purdy for incompetence. The second dismissal invoked the two-dismissal rule. The district court had power to vacate second dismissal under Rule 60(b) if justification existed, since voluntary dismissal operated as adjudication on merits and therefore was a "final judgment" under Rule 60(b). *Randall v. Merrill Lynch,* 484 U.S. 1027 (1988). The action is a Richard Charles Purdy personal complaint under color of a nominal plaintiff against a diverse party, Roger Chase Purdy. Petitioner is entitled to two-dismissal, Rule 60(b) relief, and Fed. Civ. P. 41(a)(2) federal court dismissal order, and a Court of Appeals Case No. 98-3628 review and relief under 28 U.S.C. Section 1651.

13. DEFENDANT RICHARD PURDY ABUSED TWO-DISMISSAL RULE.

The two-dismissal rule is necessary to prevent abuse of privilege of notice dismissal granted in Rule 41(a)(1). *American Cyanamid Co. v. McGhee,* (5th Cir. 1963). Richard Purdy abused Rule 41 and continued his personal claims under state court color and against an incompetent and

his estate without a discreet federal attorney ad litem. Roger Chase Purdy asks the Court to find if the two-dismissal rule is applicable in this case, and the incompetent and petitioner are entitled to protections and relief against Richard Charles Purdy and his many attorneys' abuse of the judicial process.

14. THE DISMISSAL IS A BAR TO RICHARD CHARLES PURDY CLAIMS.

The primary purpose of "two-dismissal rule" is to prevent unreasonable use of plaintiff's unilateral right to dismiss action prior to filing of defendant's responsive pleading; thus, where plaintiff has once dismissed suit on same claim in state court, second voluntary dismissal upon notice and not upon motion for court order will operate as conclusive adjudication of plaintiff's claim and bar future suits on those claims. *Crowe v. Blue Cross Hospital Service, Inc.*, 64 F.2d 540 (8th Cir. 1979). Since 1975, Richard Purdy or Richard Charles Purdy knew of his zero interest in Richard Chase Purdy affairs. Appellant asks for relief here and Court of Appeals Case No. 98-3628.

15. THE LOWER FEDERAL COURTS FAILED TO ADDRESS REMOVAL.

The district court and the court of appeals did not address the petition for removal before addressing the notice of dismissal. The district court held petitioner's collateral motions for months. In January, 1999, orders and "Denied" notations without showing grounds were

issued. Fed. R. Civ. P. 41 cannot be applied until the alignment of parties of the notice of removal is considered and determined. Federal rules and law apply in federal courts, not state law. The Court of Appeals did not address the removal petition. This Court may, by decree, lay hold of the parties, and compel them to do what according to the principles of equity they ought to do, thereby securing and establishing the rights of which (Richard Chase Purdy, Roger Chase Purdy) have been deprived by fraud and collusion. *Arrowsmith v. Gleason*, 129 U.S. 86 (1889) (District Court Doc. 7, page 19). The writ of certiorari should issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roger Chase Purdy

APPENDIX A

No. 99-3293

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RICHARD CHARLES PURDY, Guardian of the Person and Estate of Richard Chase Purdy, an incompetent person, Plaintiff-Appellee, v. RICHARD CHASE PURDY, et al., Defendants, ROGER CHASE PURDY, Defendant-Appellant.	)	ORDER (Filed Jan. 28, 2000)

NOT RECOMMENDED FOR
FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be *prominently* displayed if this decision is reproduced.

Before: JONES, NORRIS, and SILER, Circuit Judges.

Roger Chase Purdy, a pro se Ohio [sic] resident, appeals a district court order denying his motion to vacate the voluntary dismissal of a state probate action

removed to district court. *See* 28 U.S.C. § 1441. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On September 13, 1996, Roger Purdy filed a petition to remove a Butler County, Ohio probate action filed by Richard Charles Purdy, as guardian for Richard Chase Purdy, against Richard Chase Purdy, Roger Chase Purdy, Maralynn P. Dowell, and Richard Charles Purdy. Richard Charles Purdy filed the probate action to obtain authority to sell real estate owned by his ward. Richard Charles Purdy filed a notice of voluntary dismissal pursuant to Fed.R.Civ.P. 41 on October 11, 1996, because his ward died on September 21, 1996. Roger Purdy filed a motion to vacate the notice of dismissal on June 19, 1997. *See* Fed.R.Civ.P. 60. The district court denied the motion to vacate and Roger Purdy's other motions by marginal entries and an order dated January 12, 1998. This appeal followed.

The appropriateness of a voluntary dismissal under Fed.R.Civ.P. 41(a)(1) is a question of law subject to de novo review. *See University of S. Ala. v. American Tobacco Co.*, 168 F.3d 405, 408 (11th Cir. 1999); *Camacho v. Mancuso*, 53 F.3d 48, 51 (4th Cir. 1995).

Upon review, we conclude that Richard Charles Purdy was entitled to voluntarily dismiss his case. The Federal Rules of Civil Procedure apply to civil actions removed to federal district court from state court. *See* Fed.R.Civ.P. 81(c); *Willy v. Coastal Corp.*, 503 U.S. 131, 134-35 (1992). Under Fed.R.Civ.P. 41(a)(1)(i), "an action

may be dismissed by the plaintiff without order of court . . . by filling a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment. . . . " Ordinarily, a Rule 41(a)(1) voluntary dismissal is effective immediately and requires no action by the district court. *See University of S. Ala.*, 168 F.3d at 409; *Williams v. Clarke*, 82 F.3d 270, 273 (8th Cir. 1996); *Marex Titanic, Inc. v. Wrecked and Abandoned Vessel*, 2 F.3d 544, 546 (4th Cir. 1993). None of the defendants filed an answer or a motion for summary judgment in the district court before Richard Charles Purdy filed his notice of voluntary dismissal. Therefore, voluntary dismissal was proper.

We have reviewed Roger Purdy's arguments on appeal and conclude that they are without merit. Accordingly, we affirm the district court's order. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

Richard Charles Purdy, Guardian of the Person and Estate of Richard Chase Purdy	)	Civil Action No. C-1-96-903
Plaintiffs,	)	
vs.	)	
Richard Chase Purdy, Rogert Chase Purdy, Maralynn P. Dowell Richard Charles Purdy	)	
Defendants.	)	

ORDER

(Filed Jan. 12, 1999)

This matter comes before the Court upon Defendant, Robert Chase Purdy's Application for Citation to File Account (Doc. No. 14), Motion for Appointment of Federal Guardian ad Litem for Richard Chase Purdy, an incompetent (Doc. No. 15) and Application for Citation to File Account (Doc. No. 16).

The Court notes that this matter was dismissed by stipulation on October 11, 1996 (Doc. No. 6). Since that time movant has filed a Motion to Vacate Notice of Dismissal to Continue this Action, and for such Other and Further Relief for Roger Chase Purdy, Richard Chase Purdy and his estate (Doc. No. 7), which was denied by

marginal notation on January 12, 1998 and a Motion and Notice for Order Directing Clerk of District Court to Issue Writ of Certiorari to State Court – Refusal by State Court to Certify State Copies and to Comply with Removal (Doc. No. 10), which was denied by marginal notation on January 12, 1998.

Through error and inadvertence the Court entered an Order of Reference of this matter to Magistrate Judge Timothy S. Hogan on January 14, 1998 (Doc. No. 13). That order of reference is hereby WITHDRAWN as improvidently issued.

The filings that are the specific subject of this Order (Doc. Nos. 14, 15 and 16) are hereby STRICKEN from the record. This matter is CLOSED. The Clerk is DIRECTED not to accept further filings of any kind in this case without the prior specific authorization of this Court.

IT IS SO ORDERED.

Dated: January 11, 1999

/s/ Sandra S. Beckwith
Sandra S. Beckwith
United States
District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION – CINCINNATI

RICHARD CHARLES PURDY, Guardian of the person and estate of Richard Chase Purdy, AN INCOMPETENT PERSON, Plaintiffs, vs. RICHARD CHASE PURDY, ROGER CHASE PURDY, MARALYNN P. DOWELL, RICHARD CHARLES PURDY, Defendants.	Civil Action No. C-1-96-903 HON. SANDRA S. BECKWITH Oral Argument Requested [Denied M.B. Beckwith] /s/ M.B. Beckwith 1-14-98

ROGER CHASE PURDY MOTION AND NOTICE – FOR ORDER DIRECTING CLERK OF DISTRICT COURT TO ISSUE WRIT OF CERTIORARI TO STATE COURT – REFUSAL BY STATE COURT TO CERTIFY STATE COPIES AND TO COMPLY WITH REMOVAL

Rogert Chase Purdy, pro per, hereby moves this Court for an order directing the Clerk of this court to issue forthwith a writ of certiorari to Common Pleas Court-Probate Division, of the State of Ohio, in and for the County of Butler, Butler County Courthouse, Hamilton, Ohio, commanding such court to certify, or cause to

be certified, and returned to this Court, a true, full and correct copy of all records and proceedings considered,

* * *

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RICHARD CHARLES PURDY, Guardian of the Person and Estate of Richard Chase Purdy, an incompetent person Plaintiff -vs- RICHARD CHASE PURDY, ROGER CHASE PURDY, MARALYNN P. DOWELL and RICHARD CHARLES PURDY Defendant	CASE NO. C-1-96-903 (Judge Beckwith) NOTICE OF APPEARANCE (Filed Oct. 11, 1996)

Now comes JOHN W. UHL, attorney at Law licensed to practice in the State of Ohio and in the United States District Court for the Southern District of Ohio, and herewith enters his appearance as co-counsel for Plaintiff, Richard Charles Purdy, Guardian of Richard Chase Purdy, the Plaintiff herein.

/s/ John W. Uhl
JOHN W. UHL (0028887)
Attorney at Law
2 So. 3rd St.
520 Great Lakes Bancorp
Hamilton, OH 45011
(513) 868-8900

/s/ Gerald G. Froelke
GERALD G. FROELKE
Attorney at Law
315 Key Bldg.
Hamilton, OH 45011
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Notice of Appearance was served on Richard Purdy, P.O. Box 284, Hamilton, OH 45012, Roger Purdy, P.O. Box 1200, Brighton, MI 48116 and Marilyn Dowell, 2073 White Birch Dr., Vista, CA 92083 by US ordinary mail this 9th day of October, 1996.

/s/ John W. Uhl
JOHN W. UHL
Attorney for Plaintiff

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI

RICHARD CHARLES PURDY, Guardian of Person and Estate of Richard Chase Purdy Plaintiff -vs- RICHARD CHASE PURDY et al Defendant	*	CASE NO. C-1-96-903 (Judge Beckwith) SUGGESTION OF DEATH OF RICHARD CHASE PURDY

Now comes John W. Uhl, Attorney for Plaintiff Richard Purdy, and represents to this Court that Richard Chase Purdy, the ward of said Guardian and a named defendant herein, died on September 21, 1996 at Fairfield, Ohio. A copy of his death certificate is attached hereto and incorporated herein.

respectfully submitted,

/s/ John W. Uhl
JOHN W. UHL (0028887)
Attorney for Plaintiff
2 So. 3rd St.
520 Great Lakes Bancorp
Hamilton, OH 45011
(513) 868-8900

CERTIFICATE OF SERVICE

I hereby certify that copy of the within suggestion of Death was served upon defendants of record this 9th day of October, 1996 by US ordinary mail.

/s/ John W. Uhl
JOHN W. UHL
Attorney at Law

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI

RICHARD CHARLES PURDY, Guardian of the Person and Estate of Richard Chase Purdy, an Incompetent Person Plaintiff -vs- RICHARD CHASE PURDY, et al Defendants	CASE NO. C-1-96-903 (Judge Beckwith) *NOTICE OF DISMISSAL* (Filed Oct. 11, 1996)

Now comes Plaintiff, Richard Purdy, Guardian of the Person and Estate of Richard Chase Purdy, an incompetent person, and represents to the Court that the ward of said guardian died on September 21, 1996 in Fairfield, Ohio and that as a result, it is no longer necessary for the Guardian to seek the relief sought in the original complaint filed herein.

Therefore, Richard Charles Purdy, Guardian of Richard Chase Purdy, pursuant to Rule 41 of the Federal Rules of Civil Procedure hereby dismisses his complaint.

/s/ John W. Uhl
JOHN W. UHL (0028887)
Attorney for Plaintiff
2 So. 3rd, 520 Great Lakes Bldg.
Hamilton, OH 45011
(513) 868-8900

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Notice of Dismissal was served upon the following by US ordinary mail on October 9, 1996: Richard Purdy, Guardian, P. O. Box 284, Hamilton, OH 45012, Roger Purdy, P.O.Box 1200, Brighton, MI 48116, Maralynn Dowell, 2073 White Birch Dr., Vista, CA 92083.

/s/ John W. Uhl
John W. Uhl
Attorney for Plaintiff

APPENDIX G

No. 99-3293

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RICHARD CHARLES PURDY, Guardian of the Person and Estate of Richard Chase Purdy, an incompetent person, Plaintiff-Appellee,	)	
v.	)	ORDER
RICHARD CHASE PURDY, et al., Defendants,	)	(Filed Apr. 03, 2000)
ROGER CHASE PURDY, Defendant-Appellant.	)	

Before: JONES, NORRIS, and SILER, Circuit Judges.

Defendant-appellant, Roger Chase Purdy, has filed a petition for rehearing of this court's order of January 28, 2000, affirming the district court's judgment denying his motion to vacate the voluntary dismissal of a state probate action removed to district court. *See* 28 U.S.C. § 1441.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is thus denied.

ENTERED BY ORDER OF
THE COURT

/s/ Leonard Green
Clerk

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

MS. MICHELLE M. DAVIS
(513) 564-7025

Filed: February 14, 2000

Roger Chase Purdy
P.O. Box 1200
Brighton, MI 48116

RE: 99-3293
Purdy vs. Purdy
District Court No. 96-00903

Dear Counsel:

This is to advise that the court has granted your motion for an extension of time in which to file a Petition for Rehearing.

Your petition is to be received in the clerk's office no later than the close of business on **2/25/00.**

(Ms.) Michelle M. Davis
Case Manager